OBSERVATIONS

ON THE

Courſe of PROCEEDING

IN

ADMIRALTY Courts.

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ADMIRALTY COURTS.

IN

COURTS OF PROCEEDING

ON THE

OBSERVATIONS

R. Great Britain and Netherl.
Admiralty Courts

OBSERVATIONS

ON THE

Course of PROCEEDING

IN

ADMIRALTY Courts

IN

PRIZE CAUSES:

IN WHICH,

The Expediency of the RULES directed to be observed by the High Court of Admiralty in Condemning Prizes, by the Acts of the 12th and 17th Years of his present Majesty's Reign; and of the BILL *Depending* in Parliament for *Enforcing* the Observance of those *Rules*; are attempted to be fully Consider'd.

By a GENTLEMAN of *Lincoln's-Inn.*

Qui Statuit aliquid, parte inaudita *altera,*
Æquum *licet Statuerit, haud* Æquus *fuit.*

SENEC. MED.

LONDON:

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MDCCXLVII.

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ADMIRALTY COURTS

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PRIZE CAUSES:

IN WHICH,

The Expediency of the RULES directed to be obſerved by the High Court of Admiralty in Condemning Prizes, by the Acts of the 12th and 13th Years of his preſent Majeſty's Reign; and of the BILL depending in Parliament for Enforcing the Obſervance of thoſe Rules, are attempted to be fully Conſider'd.

By a GENTLEMAN of Lincoln's-Inn.

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MDCCXLVII.

OBSERVATIONS

ON THE

Court of PROCEEDING

IN

ADMIRALTY Courts,

IT hath been usual for the Crown at the breaking out of every War, by Commission under the Great Seal, to direct the Lord High Admiral or the Commissioners for executing that Office, to authorize and require the Judge of the high Court of Admiralty of England to hear and determine Prize Causes; — And the Lord High Admiral or Lords Commissioners for executing that Office have thereupon, by Commission or Warrant under the

[redacted]

Commiſſion, and in Right of his Office of Judge of the Court of Admiralty, until the Year 1702, poſſeſſed the ſole Power of condemning Prizes taken by *Engliſh* Ships, *in any Part of the World*; — The Courts of Vice-Admiralty in *Ireland*, or the Plantations, not interfering therein, except as hereafter is mentioned.

By the Act of the 5th of *William* and *Mary*, Cap. xxv. for encouraging Privateers, Sect. 16. Leave was given to carry Prizes, *taken in the Weſt Indies or America* [redacted] of the *Britiſh* Plantations, there [redacted] until the ſame ſhould be condemned or diſcharged *by ſuch Perſons as ſhould be lawfully commiſſioned in that Behalf*.

18 *Dec.* 1702. A Commiſſion iſſued under the Great Seal, impowering the Lord High Admiral to authorize the Vice-Admirals *in the Plantations* to proceed in *Prize Cauſes*, in Conſequence whereof, thoſe Courts

Courts have since had concurrent Right with the high Court of Admiralty of *England* of condemning Prizes within their respective Departments.

4 *June*, 1745. The Lords of the Admiralty by their Warrant impowered Doctor *Bartlet*, Judge of the Court of Admiralty in *Ireland*, to determine Prize Causes, and the like power hath, since the present War, been given to the Judges of the Courts of Vice-Admiralty at *Gibraltar* and *Minorca*.

II. Appeals from Sentences in the Court of Admiralty of *England*, as well in Suits relating to *Prizes* as in all *others*, were anciently made to the King (*a*); and the Proceedings on these Appeals have always been according to the Forms prescribed by the Civil or Admiralty Law (*b*).

In the Patent Rolls in the Tower, of the Reign of King *Richard* II. there are several Commissions to hear Appeals from Sentences of the Court of Admiralty, in some of which,

(*a*) Rot. 33. Ed. I. de Superioritate Maris Angliæ et Jure Admiralitatis in eodem.

(*b*) Rot. Parl. 17. R. 2. m. 1. Selden. Dis. ad Fletum p. 531. Rot. Franciæ 6. R. 2. m. 21. and Rot. Pat. 4. H. 6. pars. 2. m. 11.

the appeal is mentioned to be made to the King (a), in some to the King and his Council (b), in others to the King and his Audience (c), and in others to the King's Audience (d).

In the Reigns of *Henry* III. (e), *Henry* V. (h), and *Henry* VI. (i), the Appeals were commonly expressed to be *ad Regem & Audientiam suam*, and they continued in that Form during several of the subsequent Reigns.

In the Reign of *Henry* VIII. they were mentioned to be made to the King, in his Court of Chancery; and in the Reign of Queen *Elizabeth*, the appeal was sometimes expressed to be made to the Queen, in her Court of Chancery (k), and in some Instances to the Queen and her Court of Chancery (l); these Appeals were always heard and determined by certain Judges Delegates, appointed by the Crown, by a *distinct* Commissi-

(a) Rot. Pat. 13. R. 2. pars. 2. m. 27.
(b) Rot. Pat. 6. R. 2. pars. 1. m. 12. dorso.
(c) Rot. Pat. 17. R. 2. pars. 1. m. 8.
(d) Rot. Pat. 15. R. 2. pars. 2. m. 36.
(e) Rot. Pat. 11. H. 4. pars. 1. m. 12. intus.
(h) Rot. Pat. 6. H. 5. m. 17.
(i) Rot. Pat. 25. H. 6. pars. 2. m. 21.
(k) Stat. 25. H. 8. c. 19. Sect. 4. & Stat. 8. Eliz. c. 5.
(l) Rot. Pat. 45. Eliz. quinta pars.

on,

on, which issued for hearing and determining *each* Appeal, in the same Manner as is at present practised on Appeals from Ecclesiastical Courts. The Statute of the 25 Hen. VIII. c. xix. Sect. 4. which gave the Appeal from the Arch-Bishop's Court to the King in his Chancery, in Causes of ecclesiastical Cognizance, directing that upon every such Appeal a Commission shall issue under the Great Seal, *the 20 in Case of Appeal from the Admiral's Court.*

In the fourth Year of the Reign of King *Charles* I. the Course of appealing was regard to Prize Causes, was, *for Reasons of State* (m), varied, and a general Commission issued in that Year to the Lord Treasurer, and his other Lords of the Privy Council, constituting them *standing Commissioners*, to hear and determine all Appeals from the Court of Admiralty, *in Case of Prize* (n).

The Stipulations, which about this Time began to be inserted in the Treaties between this Crown and other States, for finally doing Justice to Foreigners on Prize Appeals in the

(m) Rym. Fœd. vol. 19. p. 300. col. 1.
(n) Rym. Fœd. vol. 19. p. 7.

Privy

Privy Council, gave rise to this standing Commission.

About three Years after the erecting this new Commission, the Earl of *Warwick* having taken a Ship called the *Augustine* of *Genoa*, which was claimed by *Ferdinando Massola*, a *Genoese*, the Judge of the Admiralty decreed the Ship to be restored to *Massola*, upon which the Earl appealed to the King in his Court of Chancery, and sued out a Commission of Delegates, directed in the usual Form, to particular Judges Delegates, to hear and determine the same; but by an Order of Council of the 31st of *December*, 1631, the hearing the said Appeal was declared to belong to the standing Commissioners, appointed by the Commission of 4 *Car.* I. and this Resolution of the King and Council was signified to the Lords Commissioners, by a new Commission under the Great Seal, dated the 2nd of *June*, 7 *Car.* I. (o), since which time the Authority of the standing Commission has not been questioned, the like Commissions *Mutatis Mutandis* having issued in the following Reigns.

(o) Rym. Fœd. vol. 19. p. 300.

On

On the 14th of *March*, in the 27th of King *Charles* II. a like Commission issued to the Duke of *Buckingham*, and twelve other Lords of the Privy Council.

On the 16th of *August*, in the second Year of the Reign of King *William* and Queen *Mary*, a new Commission in the like Form issued, directed to all the Lords of the Privy Council by Name (*p*).

On the 20th of *October*, in the 1st Year of the Reign of Queen *Anne*, a like Commission issued, directed to all the Lords of the Privy Council by Name, appointing them and all and every her Majesty's Privy Councellors, for the Time being, to be Commissioners for receiving and determining Prize Appeals (*q*).

In the Exercise of this Jurisdiction, the Lords of the Privy Council act as a Court of Delegates, and proceed according to the Forms of the Civil or Admiralty Law, and receive Appeals, and affirm, or reverse the Sentence complained of, without any Reference from or reporting their Opinion to his Majesty; and in the Course of these Prize

(*p*) Rot. Pat. 2. W. & M.

(*q*) Rot. Pat. 1. Annæ pars. 10.

Appeals

Appeals the Proceedings have always been according to the Forms of the Court of Admiralty here, and for that Purpose their Lordships have usually referred the Expediting all intermediate Acts, preparatory to the Hearing (r), such as the Admissibility of *Allegations, pleading Facts not pleaded in the Court below*, which, by the Admiralty Law and Usage, are permitted in Prize Appeals, granting Commissions for examining Witnesses on such new Allegations, &c. to a Surrogate named by their Lordships, whom, by their Commission, they are impowered to appoint. Whereas on other Appeals to his Majesty in Council, the Parties are not permitted to enter into the Proof of any new Facts, the Appeal being always to be heard and determined on the Proofs made use of in the Court below.

Until the Year 1708, Appeals from the Vice Admiralty Courts in the Plantations, in Cases of Prize, were made to the High Court of Admiralty in *England*, the Authority of the Lords Commissioners for hearing and determining Prize Appeals being by their Commission

(r) Register of the Lords Commissioners for hearing Prize Appeals, N°. 6. fol. 412, 420, &c.

mission

ſtiſſion confined to Caſes ſentenced or adjudged *in the Court of Admiralty of England*: But in 1708, thoſe Appeals being directed by the *American* Act (s), to be made *directly* to her Majeſty in her Privy Council, in like Manner as Prize Appeals were then allowed from the high Court of Admiralty of *England*, thereupon by a new Commiſſion dated the 16th of *September*, 1708, directed to all the Lords of the Privy Council by Name; the Queen revoked the Commiſſion, which, in the firſt Year of her Reign, had been granted to the Lords of the Council for hearing Prize Appeals, and after reciting, That in Cauſes of Prizes, ſuits many times happened in the high Court of Admiralty here, and the Courts of Admiralty in the Plantations in *America*; whereupon Sentence being given, the Party, againſt whom ſuch Sentence had or ſhould be given, might deſire to appeal to ſome other Judge or Commiſſioner; therefore the Queen thereby appoints them, and all and every her Privy Councellors, for the Time being, to be Commiſſioners for receiving, hearing, and determining of Appeals in

(s) Stat. 6. Annæ cap. 37. Sect. 8.

the Cases aforesaid; and they were thereby impowered upon any Appeals in due Form of Law, made in that Behalf, to review and re-examine the Proceedings had, and Sentence appealed from, in any Case or Cases sentenced or judged in the high Court of Admiralty here, or in any of the Courts of Admiralty in any of the Plantations in *America*, concerning Prizes taken, or to be taken (*t*).

On the 16th of *December*, 1708, the Commission of the 16th of *September*, 1708, was revoked and a new Commission was issued in the same Words, save that the Words, *Our high Court of Admiralty here*, were omitted, and in their Place, *Our Courts of Admiralty in this our Kingdom of* Great Britain, were inserted, and then follow the Words, And the Courts of Admiralty in our Plantations in *America*, as in the former Commission.

And in this Form *mutatis mutandis* the Commission hath continued ever since, until the Year 1746, when, on Occasion of the Courts of Admiralty at *Gibraltar*, *Ire-*

(*t*) Rot. Pat. 7 Annæ.

land, &c. having been impowered to condemn Prizes, a new Commission was directed to issue, impowering their Lordships to proceed on Appeals from Sentences pronounced in those Courts.

III. By the *American* Act which received the Royal Assent the 1st of *April* 1708, *All Prize Offices* in any Port or Place in *America* were suppressed and taken away, and the Prizes which should, during the then War, be taken by private Ships of War in the *American* Seas, (being in fit *adjudged* lawful Prize in any of her Majesty's Courts of Admiralty, *in or for any of her Colonies or Plantations in* America) were thereby given to the Captors.

The Condemnation of all Prizes taken by Privateers in *America*, being by this Act intended to be entrusted with the Courts of Admiralty in the Plantations; it was thought prudent to establish the following Rules for their Proceeding, which were as *conformable* to the Practice of the Court of Admiralty here in Prize Causes, as the difference of Place and Situation would permit; and the Legislature, at the same time, thought it necessary to guard against unnecessary Delays

and unreasonable Expences, which those distant Courts of Vice-Admiralty had, or might run into in Prize Causes. The Circumstances and Abilities of the Persons, who probably might happen to be intrusted with the Distribution of Justice in the Courts of Admiralty, in some of those remote Colonies, made these Regulations the more reasonable.

Stat. 6. *Annæ* c. 37. § 24. The *American* Act therefore enacted, as follows: 'And 'for the more speedy proceeding to Condemnation, or other Determination of any Prize, 'Ship or Vessel, Goods and Merchandizes, taken by any such Privateer, Ship, or by any of 'of her Majesty's Ships of War, in *such Court of Admiralty, as aforesaid*, and for lessening 'the Expences that have been usual in those 'Cases; Be it further enacted by the Authority aforesaid, That the Judge or Judges of 'such Court of Admiralty, or other Person 'or Persons thereto authorized, shall within 'the Space of *five Days*, after Request to 'him or them, for that Purpose made, *finish* 'the *usual* preparatory Examination of the 'Persons *commonly* examined in such Cases, 'in order to prove the Capture to be lawful 'Prize, or to enquire whether the same be

law-

'lawful Prize or not; and that the proper
'Monition, usual in such Cases, shall be issued
'by the Person or Persons proper to issue the
'same, and shall be executed in the usual
'Manner by the Person or Persons proper to
'execute the same, within the Space of three
'Days after Request in that behalf made;
'and in Case no Claim of such Capture, Ship,
'Vessel, or Goods, shall be duly entered or
'made in the usual Form, and attested upon
'Oath, giving twenty Days Notice given the
'Execution of such Monition, or if there be
'such Claim, and the Claimant or Claimants
'shall not within four Days give sufficient
'Security (to be approved by such Court of
'Admiralty) to pay double Costs to the Cap-
'tor or Captors of such Ship, Vessel, or Goods,
'in Case the same so claimed shall be adjud-
'ged lawful Prize, That then the Judge or
'or Judges of such Court of Admiralty shall,
'upon producing to him or them the said Ex-
'aminations or Copies thereof, and upon
'producing to him or them, upon Oath, all
'Papers and Writings which shall have
'been found taken in, or with such Capture,
'(or upon Oath made that no such Papers
'were found) immediately, and without fur-

'ther

'*ther Delay* proceed to Sentence, either to 'discharge and acquit such Capture, or to 'adjudge or condemn the same as lawful 'Prize, according as the Case shall appear to 'him or them, *upon Perusal* of such prepa-'ratory Examinations, and also *of the Writings* found taken in, or with such Capture, '(if any such Writings shall be found); And 'in Case *such Claim shall be duly entered* or 'made, and Security given thereupon, ac-'cording to the Tenour and true Meaning of 'this Act, and there shall appear no Occasion 'to examine any Witnesses, other than what 'shall be then near to such Court of Admi-'ralty. That then such Judge or Judges shall 'forthwith cause such Witnesses to be exa-'mined, and (within the Space of *ten Days* 'after such Claim made and Security given) 'proceed to such Sentence as aforesaid, tou-'ching such Capture; But in Case, upon 'making or entering such Claim, and the 'Allegation and Oath thereupon, or the pro-'ducing such Writings as shall have been 'found taken in, or with such Capture, or 'upon the said preparatory Examinations it 'shall appear *doubtful* to the Judge or Judges 'of such Court of Admiralty, whether such

'Cap-

'Capture be lawful Prize or not; and it shall
'appear necessary, according to the Circum-
'stances of the Case for the clearing and de-
'termining such Doubt, to have an Exami-
'nation of Witnesses that are remote from
'such Court of Admiralty, and such Exa-
'mination shall be desired, and thus it be
'still insisted on, on the Captor's Part, that
'the said Capture is lawful Prize, and that
'the contrary be still persisted in, on the
'Claimants behalf. That then the said Judge
'or Judges shall *forthwith* cause such Capture
'to be appraized by Persons named on the
'Part of the Captor, and sworn truly to ap-
'praise the same according to the best of their
'Skill and Knowledge; and shall *after such*
'*Appraisement* made, and *within the Space*
'*of fourteen Days after the making of such*
'*Claim*, proceed to take good and sufficient
'Security from the Claimants, to pay to the
'Captors the full Value thereof according to
'such Appraisement, in Case the same shall
'be adjudged lawful Prize; and after such
'Security duly given, the said Judge and Jud-
'ges shall make an interlocutory Order for
'releasing or delivering the same to such
'Claimant or Claimants, or his or their

'Agents;

Agents; and the same shall be actually re-
stored or delivered accordingly.

§ 5. And it is further Enacted, by the Au-
thority aforesaid, That if any Claimant or
Claimants, shall refuse to give such Securi-
ty, the Judge or Judges shall cause the
Captor or Captors in like Manner to give
good and sufficient Security, to be approved
of by the Claimant or Claimants, to pay to
the said Claimant or Claimants the full Va-
lue according to the Appraisement, in Case
any such Capture or Captures shall be ad-
judged not to be lawful Prize; and the said
Judge or Judges shall thereupon proceed to
make an Interlocutory Order for the releas-
ing and delivering of the same to the said
Captor or Captors, or their Agents.

§ 6. And it is further Enacted, by the Au-
thority aforesaid, That all such Captures as
aforesaid, which shall be brought into any
of her Majesty's Colonies or Plantations in
America, shall, without breaking Bulk,
stay there, and be under the joint Care and
Custody of the Naval Officer, of the Port
or Place where the same shall be brought,
and of the Captors thereof, and their A-
gents, until either the same shall by fi-

nal

'nal Sentence have been cleared and dis-
'charged, or adjudged or condemned as
'lawful Prize, or that such interlocutory Or-
'ders, as aforesaid, shall have been made for
'the Releasing or Delivering of the same;
'and upon the Condemnation or Adjudicati-
'on thereof as lawful Prize, shall (in Case
'the same were taken by any such Privateer,
'Ship or Ships as aforesaid) be immediately
'delivered into the Captors thereof, and their
'Agents, to be by them disposed, as their
'Goods and Chattels; and (in Case the same
'were taken by any of her Majesty's Ships
'of War) unto such Person or Persons, and
'to be divided and disposed, as her Majesty,
'Heirs or Successors, shall in that behalf di-
'rect; and that if any Judge or Judges, or
'other Officer or Officers, to whom respect-
'ively it shall appertain, shall *delay the Doing,*
'*Performing, Making, or Pronouncing any*
'*of the several Proceedings, Matters, or*
'*Things for, towards, or relating to the Con-*
'*demning or Discharging, Releasing or Deli-*
'*vering of any such Capture in Manner afore-*
'*said*, within the *respective times herein be-*
'*fore limited*, or as soon as the same or any
'of them *ought to be done* (according to the

[illegible] all
[illegible] Judges, and other
[illegible] for every such
[illegible] Sum of five hundred
[illegible] the one Moiety thereof to her
Majesty, her Heirs and Successors, and the
other Moiety thereof, with full Costs of
Suit, to such Person or Persons as shall in-
form, or sue for the same, in any of the
Courts in or for any of her Majesty's said
Colonies or Plantations, or in any of her
Majesty's Courts of Record within her
Kingdoms of *Great Britain*.

§ 7. And it is further Enacted, by the Authority aforesaid, That there shall not be paid unto, or among all the Judges and Officers of such Court of Admiralty, as aforesaid, *for, towards, or relating to* the Adjudging or *Condemning* of such Capture, as aforesaid, as lawful Prize, above the Sum of ten Pounds, in Case such Prize, Ship, or Vessel be under the Burthen of one hundred Tons, nor above the Sum of fifteen Pounds, in Case the same be of that or any greater Burthen: And that upon Payment of either of the said respective Sums, as the Case shall require, to the said Judge or

Judges,

'Judges, or any of them, to be by him or 'them disposed or divided (as he or they shall 'think fit) among the Officers of such Court, 'such Judges and Officers, and every of them 'shall be liable to all and every the several 'Penalties hereby imposed, for neglecting or 'delaying to do or perform their several and 'respective Duties or Offices in, and relating 'to the several Proceedings aforesaid, with-'in the respective Times herein for that 'Purpose, limited.

The foregoing Clauses were, as I have been informed, prepared by a Person very conversant in Admiralty Affairs, as proper Checks and Guards on the Conduct and Proceeding of the Judges of the Admiralty Courts in the Plantations, many of whom were ignorant of the Rules of Proceeding in Prize Causes; but were by no Means adapted, or intended to be introduced as the *invariable* Rule of proceeding in Prize Suits, in the high Court of Admiralty here.

The settled Practice and established Rules of proceeding of Courts of Justice, have been always considered to be the Law of those Courts, and as such make a Part of the Law of the Land, and the Wisdom of the Legis-

lature, hath usually left the Varying and Altering those Rules, *in Re nata*, to the Discretion of those Judges, who have the Honour to preside in them, unless where some glaring Abuse, or some publick Benefit, hath been thought to require the more immediate Interposition of Parliament; and even in those Cases, Experience has shewn, that those parliamentary Regulations seldom have been attended with the good Effects proposed from them, for which many Reasons might be assigned, nothing perhaps requiring more Care than for the Legislature, by written Laws, to restrain, or lay down new Rules for Proceedings in Courts of antient and known Jurisdiction; this Observation holds stronger in the present Case, the Rules of proceeding to be observed in determining Prize Causes being drawn from the Law of Nations, from Treaties with foreign States, and the Course of the Admiralty, rather than from the municipal Laws of this Kingdom. And therefore, although the before-mentioned Regulations might be proper to be observed by the Judges and Officers of the Courts of Admiralty *in the Plantations*, in the Exercise of their newly acquired Jurisdiction of proceeding

ceeding in Cauſes of Prize, it does not follow from thence thoſe Regulations or Rules ought in Reaſon or Prudence, to be extended and made obligatory on the *Courts of Admiralty in* Great Britain. — Experience has ſhewn, that, in the Plantations many of theſe Regulations have been very far from anſwering the good and ſalutary Purpoſes, they were deſigned for, and that, inſtead of preventing Delays, and leſſening Expences, they have contributed to increaſe both. — Were it enquired into, it could be made appear, that, inſtead of the Judges and Officers of the Admiralty Courts in the Plantations being contented with the Fee of £. 15 for Condemning a Prize, that, ſince the making the *American* Act, their Sentences have frequently been put up to Sale, and pronounced in Favour of the Party who bid moſt for them.

IV. In the Year 1739. when the preſent War was declared againſt *Spain*, the Judge of the High Court of Admiralty of *England*, was under no *parliamentary* Reſtrictions, with Reſpect to the Courſe and Manner of proceeding againſt Ships or Goods ſeized as Prize; the Practice and Rules of proceeding in Prize Cauſes in that Court, had been long

before

before that Time eſtabliſhed by Precedents down from the Law of Nations and the publick Utility, which were ſufficiently known, and againſt which no Complaint had or could with Reaſon be made, either on Account of their being too dilatory or expenſive.

The *Fees* taken by the Judge and his Officers in Prize Cauſes, were ſo far from being *exceſſive*, that they are the *ſame* that were taken in the Year 1692. when a Liſt of them were laid before the Houſe of Commons, and the ſame which the 19th of *Nov.* 1734. were reported by the Commiſſioners appointed for that Purpoſe, to be *antient, lawful* and *reaſonable* Fees; and the Officers who claim them are Patent Officers, and have a Right to thoſe Fees by Grant from the Crown. (*u*)

V. Soon after the Declaration of War againſt *Spain*, a Bill paſſed '*for the more effectual ſecuring and encouraging the Trade to* 'America, *and for the Encouragement of Seamen to enter into his Majeſty's Service* (*w*);' whereby (poſſibly without its being intended, or at leaſt ſufficiently attended to) a very material Alteration was made with Reſpect to

(*u*) The Fees here intended are thoſe taken by the Judge, the Regiſter, and other ſtated Officers of the Court.

(*w*) Stat. 13. Geo. 2. c. 4.

the

the Proceedings of the High Court of Admiralty in Prize Causes; for by this Bill, which, as to this Point, is almost a verbatim Transcript of the *American* Act, *the Courts of Admiralty in* Great-Britain being named in a *preceding* Clause, the Rules and Methods prescribed by the *American* Act to be observed in Prize Causes, by the Judges and Officers of the Courts of Admiralty in the Plantations, were by *Implication* extended to the *Courts of Admiralty in* Great-Britain; and on the War being declared against France, a like Act was passed by the Legislature (x).

By these Acts, the Penalties on the Judge and his Officers, and the fixing what Sums shall be paid to them for the condemning of Prizes, were not extended to the Courts of Admiralty here, but are by express Words confined to the Courts of Admiralty in his Majesty's Plantations or Dominions [illegible].

But notwithstanding these Penalties, the Regulation, which ascertains the Fees to be taken by the Judge and his Officers in the Plantations in a Prize Cause, at 10 *l.* [illegible] according to the Tonnage of the Captures, both not, I believe, been observed in a single In-

(x) Stat. 17. Geo. II. chap. 34.

stance;

upright

of the High Court of Admiralty in similar Cases; and to this the *great Arrear* of Prize Appeals, which unavoidably remain to be heard, and which, (as *delay* is often the principal Point an Appellant hath in view) will daily increase and grow more formidable, is principally, if not solely to be attributed.

VI. At a Time therefore, when, as the only means to lessen the Expence and avoid the Delays complained of in Captors, by these preliminary Rules of determining Prize Causes, it was not unreasonable to expect their being repealed, a Bill hath been brought into Parliament, principally calculated to enforce a more strict Observance of these Rules, by the Judge and Officers of the High Court of Admiralty, under large Penalties.

The Author of these Observations being sincerely convinced this Bill, should it pass, will lay a certain Discouragement to the Captors of Prizes, and give Occasion to much Discontent and Clamour; is sensible his making any Apology for them to the Honourable Persons who have been *prevailed upon* to promote the Bill, is unnecessary and unexpected. The Rectitude of their Views and In-

Intentions in promoting this Bill, is not to be queſtioned; and, if on reconſidering this Matter, thoſe Honourable Perſons, ſhall find Reaſon to think that the Bill, inſtead of leſſening, may have a Tendency to encreaſe Expence and Delays in Priſe Cauſes, it is not to be doubted but they will be among the foremoſt of its Oppoſers.

The preſent Title of the Bill, is, 'for 'preventing Delays in condemning of Prizes 'in his Majeſty's Courts of Admiralty in 'Great-Britain and Ireland, and for putting 'an End to all unneceſſary and unreaſonable 'Expences for the ſame.'

A Bill to the ſame Effect paſſed the Houſe of Commons in 1745, but being altered by the Houſe of Peers, was then thought not proper to paſs into a Law.

The preſent Bill begins with reciting, "That the Method of proceeding in the "Courts of Admiralty for condemning of "Prizes, as the Law now ſtands, *may be* at-"tended with *great Delays*, and with unrea-"ſonable and unneceſſary *Expences*."

It hath not been uſual to found Bills of this ſort on imaginary Evils that poſſibly *may*, or *may not* exiſt. Nothing, as was be-

fore observed, but a full Conviction of real Evils and Abuses in legal Proceedings, too great for the usual Authority of the Judges to rectify, should induce the Legislature's interfering in altering the Course and Practice of Proceeding in Courts of Justice.

The Bill then recites, "that by the said Acts "of the 13th and 17th Years of his present "Majesty's Reign, it is, amongst other Things, "provided, that there shall not be paid up- "to or amongst the *Judges and Officers* of "any of the Courts of Admiralty, in any of "*his Majesty's Plantations or Dominions abroad*, "above the Sum of *ten Pounds* for condem- "ning any Prize, Ship or Vessel, under the "Burthen of *one hundred* Tons, nor above "the Sum of *fifteen Pounds*, in Case the same "be of that, or any greater Burthen; which "said Provision has, *on Experience there, "been found to answer the good and salutary "Purposes thereby intended, by preventing "such Delays in condemning of Prizes, and "by putting an End to all unnecessary and un- "reasonable Expences for the same in the se- "veral Courts of Admiralty, to which the "said Provision is by the said Act extended.*

As a Proof that this Part of the Bill proceeds on a *Miſtake*, it is a Fact known to every Perſon converſant in theſe Matters, that there hath not been a ſingle Prize Cauſe determined in the Plantations which was litigated, in which the Proviſions eſtabliſhed by theſe Acts of Parliament, either with Regard to the Expences or to the Method of Proceeding, have been, or for the Reaſons before-mentioned, could reaſonably be expected to be obſerved.

From theſe *uncertain* or *miſtaken* Premiſſes, the Bill proceeds and propoſes, 'That it 'ſhould be Enacted, That there ſhall not 'be paid unto or among all the Judges and 'Officers of any of his Majeſty's Courts of 'Admiralty of *Great-Britain* or *Ireland*, 'above the Sum of *thirty Pounds* (*y*), *for*, '*towards*, *or relating to the condemning* as 'lawful Prize, any Capture of *any Ship or* '*Ships*, whether Men of War or Merchant 'Ships, commonly called Flota Ships or Gal-'leons, or any Ship having a Regiſter, 'bound from *Buenos Ayres* or *Honduras*, *or* '*any Goods on board any ſuch Ship*; nor above

(*y*) *N. B.* The Blanks are filled up agreeable to the Bill which paſſed the Houſe of Commons in 1745.

the,

'the Sum of *twelve Pounds*, for, towards, 'or relating to the condemning as lawful 'Prize, any other Capture whatſoever, in 'Caſe ſuch Prize, Ship or Veſſel, be under 'the Burthen of *one hundred Tons*, nor above 'the Sum of *eighteen Pounds*, in Caſe the 'ſame be of *that or any greater Burthen*; 'which ſaid reſpective Sums, or either of 'them, as the Caſe ſhall require, ſhall be 'paid to the ſaid *Judge or Judges*, or any of 'them, to be by him or them diſpoſed of, or 'divided *among the Officers of ſuch Courts*, 'which he or they are hereby required to do.'

The only Reaſon I have heard given for this Part of the Bill, is, that it hath been inſiſted, the Officers of the High Court of Admiralty make a Practice of tranſlating *all the Papers* found on board a Prize, whether they are *Relevant* or not to the Point in Queſtion, and thereby put the Captors to exceſſive and unneceſſary Expences.

But upon Enquiry, this appears to be a Miſtake, it not being the Practiſe in the Court of Admiralty to tranſlate any of the Papers, but ſuch as are *Relevant* to the Queſtion,

ion, Prize or no Prize: — If in any single Instance any unnecessary Papers have been translated, why was it not complained of to the Judge as an Abuse? But no Instance can be shewn where any such Complaint was made; or if it were, that what was complained of, was refused to be *redressed*. It is a Fact known to all Persons who have been conversant in Prize Causes, that Translating *all* the Ships Papers, or more than were *necessary*, hath not been a Matter of Complaint in the Course of the present War; but that on the contrary, the Producing and Translating *such* of the Papers *only* as the Captors were advised, would tend to *Condemn* the Ship, and the *Suppressing* and *not Translating* such as might serve to *acquit*, have in many Instances, and not without Reason, been loudly complained of by the Claimants.

The making the Tonnage of the Prize Ship, and not the Length of the Proceedings and Litigation in the Cause, the Rule for fixing the *Quantum* of the Fees of the Judge, and his Officers in Prize Causes, appears to be acting as unreasonably, as it would be to fix the Value of a *Titian* and a modern Picture, by the Number of Yards they measure,

with-

In the Case of a Register Ship, it is obvious the Paper the most necessary for the

Perusal

Perusal of the Judge is the *Register*; the Translating of which out of *Spanish*, will, I believe, seldom cost less than thirty Pounds; if the Expence of translating the Ship's Papers is intended to be included in the thirty Pounds, to be allowed the Judge and his Officers for condemning a Register Ship, what is attempted by this Part of the Bill, appears to be unreasonable and impracticable; if it is not to be included, then the principal Evil, the Bill, when it was moved for, was proposed to redress, will not be affected by it.

The Direction, that the Condemnation Fee shall be paid to the Judge, to be by him disposed of, or divided among the Officers of the Court, and which he is thereby required to do, appears to be very unequal and uncertain; 1. As to the Judge who seems to be excluded taking any Part of it to himself, he being required to divide it among the Officers of the Court. 2. As to the Officers, who, as they hold their Offices by Patent, from the Crown, will by this Means become totally dependent on the Pleasure of the Judge.

If the Judge and Officers of the Court of Admiralty have behaved so, as to call on the Legislature for their interposing in this Mat-

ter, if Intereſt only is the prevailing Rule of their Actions, will it not be more reaſonable, if this Bill ſhould paſs, for Captors to expect Sentences of *Acquittal*, in which Caſe, the Judge and his Officers will be intitled to their antient and legal Fees, than Sentences of *Condemnation*, in which laſt Caſe, *only* their Fees are by the preſent Bill attempted to be leſſened and taken away.

This might be expected from a Judge capable of giving Occaſion for this Enacting Clauſe. The Caſes here put are ſuch as in Poſſibility *may*, but which no one ſhould preſume ever have or will happen in this Country.

The Bill then goes on to enact, "That "if any Judge or Officer in any of his Ma- "jeſty's Courts of Admiralty in *Great Bri-* "*tain* or *Ireland*, to whom it ſhall reſpect- "ively appertain, ſhall, upon ſuch Payment "as aforeſaid, *delay the Doing, Performing,* "*Making, or Pronouncing* any of the ſeve- "ral Proceedings, Matters, or Things, *for,* "*towards, or relating* to Condemning or "Diſcharging, Releaſing or Delivering of "any ſuch Capture, *in the Manner and with-* "*in the reſpective Times* limited, and directed

"in

" in and by the laſt recited Act of Parliament,
" or *as ſoon* as the ſame, or any of them
" *ought to be done*, according to the Tenor and
" true Meaning of the ſaid recited Act, all
" and every the ſaid Judge and Judges, and
" other Officer and Officers ſhall, for every
" ſuch Offence, forfeit the Sum of five hun-
" dred Pounds, one Moiety thereof to His
" Majeſty, His Heirs and Succeſſors, the
" other Moiety thereof, with full Coſts of
" Suit, to ſuch Perſon or Perſons, who
" ſhall inform or ſue for the ſame, in any
" of his Majeſty's Courts of Record in *Great*
" *Britain* or *Ireland* reſpectively.

A *ſingle* Inſtance cannot be ſhewn, during the War, in which the Judge, or the Officers of the High Court of Admiralty of *England*, have *delayed* to do and perform what is required of them by the Acts of the 13th and 17th Years of His Majeſty's Reign, in Prize Cauſes, where it was poſſible for them to do it; if no ſuch Inſtances can be produced, what good Reaſon can be aſſigned for ver-rifying with Penalties a Judge, whoſe Integrity and Uprightneſs ſtand unimpeached, or Officers, who cannot with Truth be charged with Extortion, or Miſbehaviour?

The Rules prescribed by the Statutes of the 13th and 17th Years of his Majesty's Reign, are in some Instances *impossible*, in most others *impracticable* to be observed, consistent with the Judge's determining the Merits of the Cause, agreeable to the Principles of Justice and Equity.

The Acts of the 13th and 17th of his present Majesty allow the Claimant five Days after the making his Claim to give Security, and the Judge is within ten Days after the Security given to proceed to hear the Cause; and if on such Hearing it shall appear necessary to go into farther Proof, the Judge is *forthwith* to cause the Capture to be appraised, and, *after such Appraisement*, and within *fourteen Days* after the *making* the Claim, is to proceed to take Security from the Claimants, and deliver the Prize to them: The Order for the Appraisement is not to be pronounced until the 13th Day after the Claim is *made*, and when it is pronounced, preparatory to the Appraisement, the Cargo must be *unshaded*, which may take up several Weeks, and yet the Judge, if the present Bill pass, is at his Peril to take the Security, *within fourteen Days after the making the Claim*,

Claim, or be expoſed to be ſued by a vexatious Informer for a Penalty of five hundred Pounds, for not doing what, in the Nature of Things, *it was not poſſible for him to do.*

To ſay that, if it be made appear to a Jury that it was *impoſſible*, the Judge would be acquitted, is not a ſufficient Anſwer to the Objection; is it prudent, wantonly and without any juſt Foundation to expoſe the Honour and Dignity of the Judge to Proſecutions of this Sort? The Obedience the Subject pays to the Laws of the Land, is, in a great Meaſure, owing to the Reverence and Awe they are wiſely taught to have for the Judges, the reverend and learned Interpreters of them; and with Reſpect to *Foreign Nations*, it is ſubmitted how far it be honourable or prudent to place a Judge who exerciſes ſo great an Authority over their Properties, in a Light ſo diſadvantageous.

It will be difficult to ſhew an Inſtance of a Judge, whoſe Integrity is above Suſpicion, being put into the cruel Situation the Judge of the High Court of Admiralty will be in, ſhould this Bill paſs into a Law.

If at any Time the hearing Prize Cauſes hath been delayed, it will, on Enquiry, come

come out to be owing to the bodily Infirmities the preſent Judge hath the Misfortune to be frequently afflicted with, ſhould it be owing to any other Cauſe, the Honourable Board have it in their own Power effectually to remedy it, without reſorting to ſo extraordinary an Expedient as the preſent Bill.

In many Caſes, where the Voyage and Ships Papers are fraudulent and colourable, and would ſo appear upon a careful Examination, if the Judge (which muſt be the Caſe if the Bill paſs into a Law) ſhould be denied ſufficient Time to have thoſe Matters laid fully before him, it muſt frequently happen, that to avoid ſubjecting himſelf to malicious Proſecutions for ſuch large Penalties, he will think it ſafeſt to preſume the Property to continue in the *firſt Poſſeſſor*, and *reſtore* many Ships and their Cargoes to the Claimants, which on a cloſer Examination, had he had Time allowed him, he would have adjudged to be good Prize. This will neceſſarily *increaſe* the Number of Appeals to the Lords Commiſſioners of Prizes, and will in Effect bring moſt Prize Cauſes, in which there is any Litigation to be *heard* in the *firſt* Inſtance *upon the Merits* before their Lordſhips, which

in

in the Nature of the Thing, will occaſion exceſſive Delay and Expence to the Parties.

The firſt Act to be done towards Condemning a Prize, is the cauſing the Officers and Part of the Crew of the Prize Ship to be examined before the Judge of the Admiralty, or Commiſſioners appointed by him for that Purpoſe, on Interrogatories in *Præparatorio*. Theſe Preparatory Examinations are the Foundation of the Judge's Proceeding againſt the Prize, and are required by Treaty, by his Majeſty's Inſtructions to Men of War and Privateers, and by the ſeveral Statutes relating to the Condemnation of Prizes.

For avoiding Delay and Expence, when the Prize is brought into a Port at a Diſtance from *London*, the Examinations of the Officers and ſome of the Crew, are uſually taken by ſtanding Commiſſioners, deputed for that Purpoſe by the Judge of the Admiralty in moſt of the Sea-ports of Great *Britain* and *Ireland*, and at *Lisbon*, and other neutral Places.

Theſe ſtanding Commiſſioners, and the Notary or Actuary, who acts by ſubſtitution from the Regiſter, have been always conſi-

dered

ſaid as Officers of the Court, and their uſual Fees for taking the preparatory Examinations in a Prize Cauſe, which vary according to the length and Number of the Examinations, frequently amount to 10*l.* and often to much more. If the preſent Bill ſhould paſs, and the Judge and all the Officers be allowed to take only 18*l.* for condemning a Prize, it is obvious what would be the Conſequence; the Judge in his own Defence muſt immediately *revoke* all theſe ſtanding Commiſſions, whereby the Captors will in all Caſes be obliged to bring the Crew of the Prize, who are Priſoners of War, under a Guard, at a great Expence to *London*, to be examined, and this before they can inſtitute their Suit for condemning their Prize; the Confuſion and Clamour, the exceſſive Expence and certain Delay this will unavoidably occaſion in condemning Prizes, are as evident as the introducing them by a Bill intended for *preventing* Delays and putting an End to Expence in Prize Cauſes would be extraordinary.

Lincoln's-Inn, May 11, 1747.

FINIS.